

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2052.

662

Helen S. Morris, Executrix

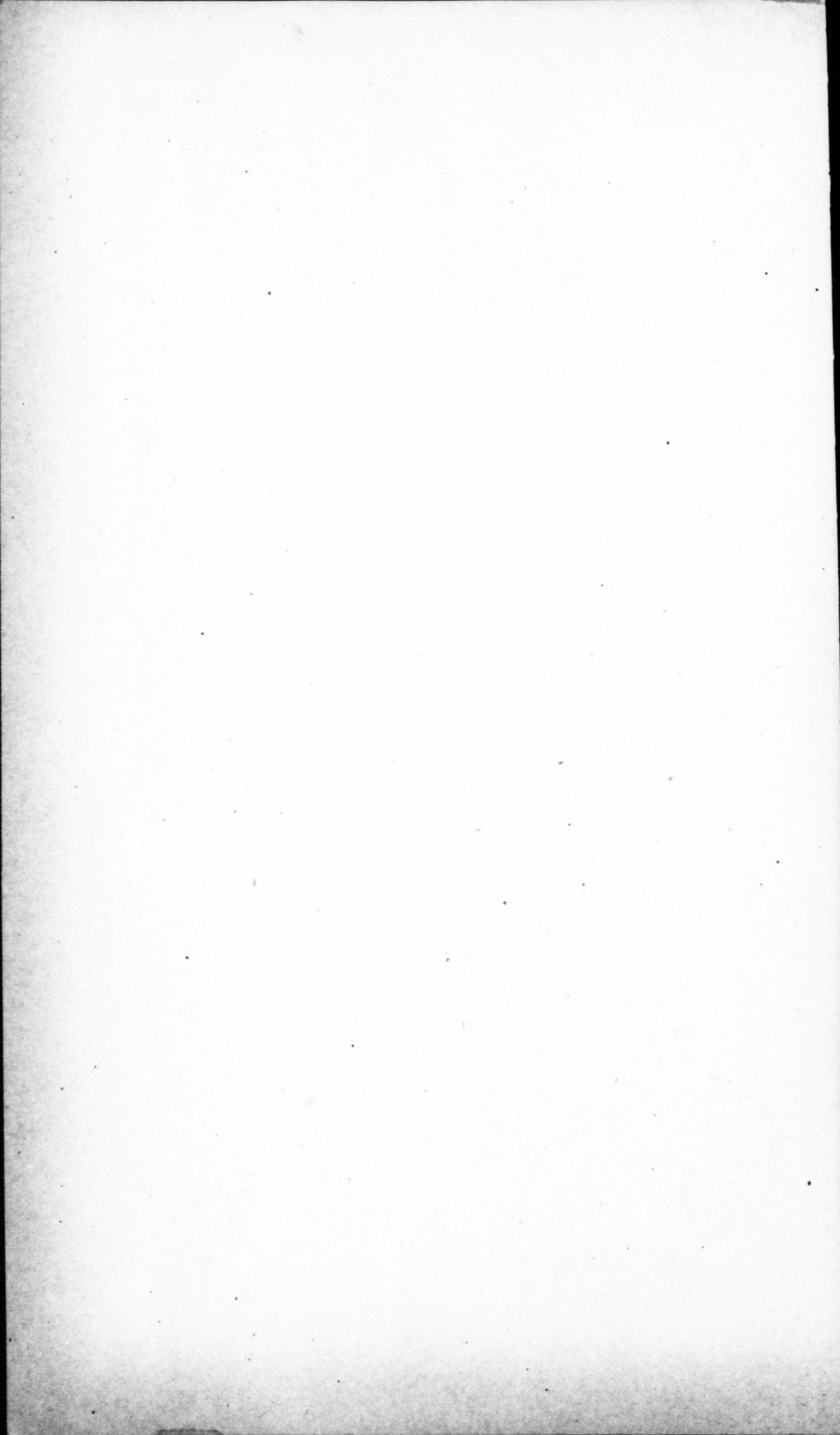
of MARTIN F. MORRIS,^{deceased,} APPELLANT,

vs.

THE METROPOLITAN SURETY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 13, 1909.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2052.
*Helen S. Morris, Executrix
deceased,*
of MARTIN F. MORRIS, APPELLANT,

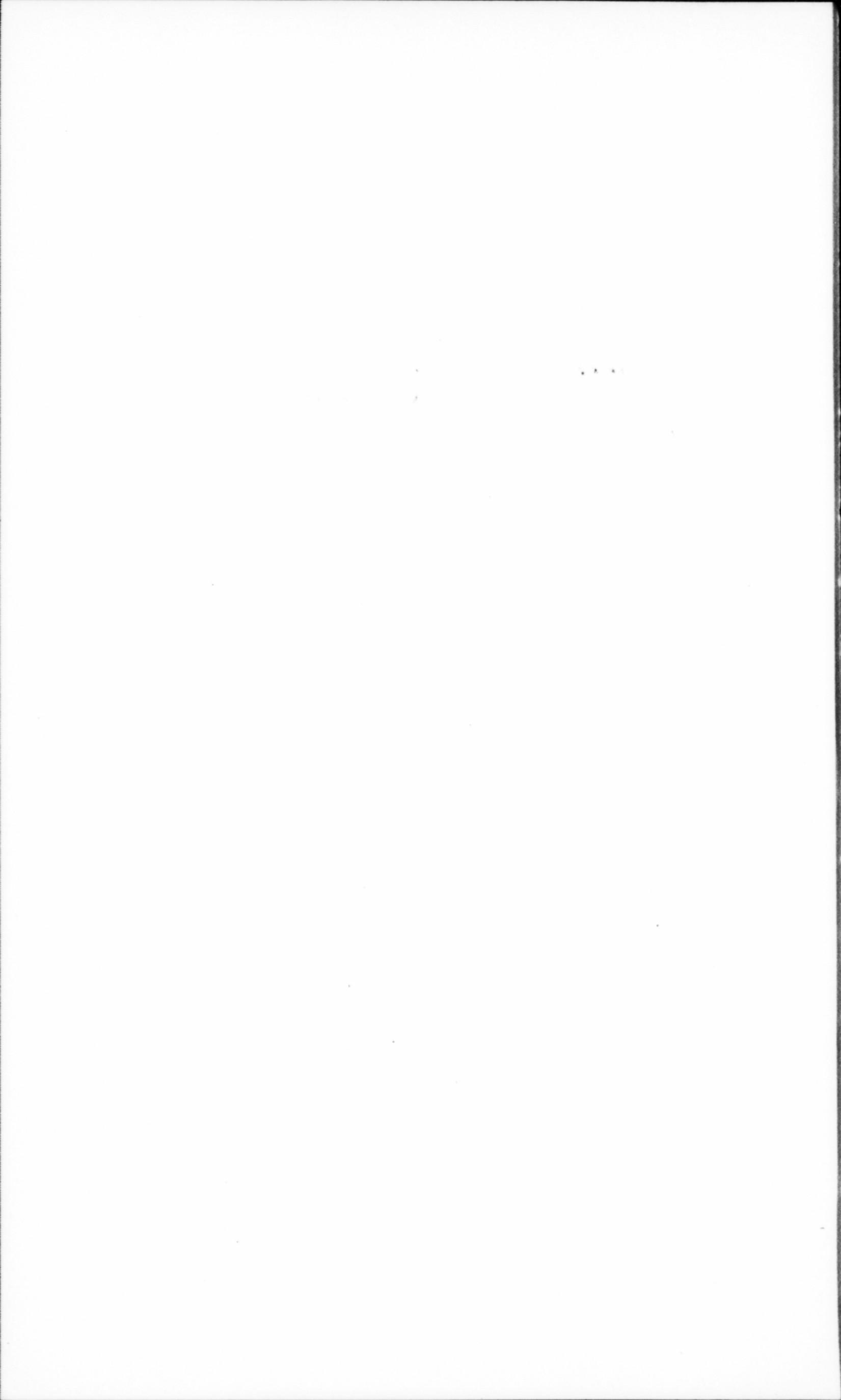
vs.

THE METROPOLITAN SURETY COMPANY, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2052.

MARTIN F. MORRIS, Appellant,
vs.
THE METROPOLITAN SURETY CO.

a Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
vs.
THE METROPOLITAN SURETY COMPANY, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause ,to wit:

1 *Declaration, etc.*

Filed Jan. 10, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
vs.
THE METROPOLITAN SURETY COMPANY, Defendant.

The plaintiff, Martin F. Morris, sues the defendant, The Metropolitan Surety Company, a body corporate under and by virtue of the laws of the State of New York, but doing business and having an office and an agent in the District of Columbia, for that:

Whereas, heretofore, to wit, on or about the 11th day of November, A. D. 1905, by an instrument of writing under seal, bearing date on said day, and which the plaintiff now here brings into Court, one John F. McCormick and one Nathaniel G. Watts, as principals,

and the defendant company signing the same as surety, covenanted and contracted with the plaintiff that they, the said McCormick and Watts, in consideration of the conveyance by the plaintiff to them of seventeen (17) several lots of ground in the District of Columbia, of which he was the owner, and which the plaintiff did then and there actually convey to them, would construct for the plaintiff,

within the period of six months from and after the said 11th
2 day of November, A. D. 1905, upon seven other lots of ground

of the plaintiff interspersed between the aforesaid seventeen lots, seven houses, together with seventeen houses on the aforesaid seventeen lots, at the rate of three thousand dollars (\$3,000) for each and every one of the said houses, for which the plaintiff was to make payment to said McCormick and Watts by the conveyance of the aforesaid seventeen lots, and also by the payment to said McCormick and Watts by the plaintiff of the sum of two thousand four hundred and sixty-six dollars and fifty-eight cents (\$2,466.58), upon the completion of said seven houses, said last mentioned sum being the difference between the agreed value of the lands conveyed by the plaintiff to said McCormick and Watts and the agreed cost of the seven houses contracted to be constructed by them for him,— all in accordance with certain plans and specifications agreed upon between the parties and in the aforesaid instrument of writing mentioned;

And whereas, by their bond or instrument of writing under seal, bearing date on the 14th day of December, A. D. 1905, and which the plaintiff now here brings into Court, the said McCormick and Watts, as principals, and the defendant, The Metropolitan Surety Company, as surety, in order to secure to the plaintiff the faithful performance of said contract and agreement, acknowledged themselves to be held and firmly bound, jointly and severally, to the plaintiff, in the sum of eighteen thousand dollars (\$18,000) to be paid to the plaintiff, his heirs, executors and assigns, which bond or instrument of writing under seal had the condition thereto

3 annexed, that, of the said McCormick and Watts should faithfully perform their contract and agreement aforesaid, and should construct said houses in accordance with such agreement, and should indemnify the plaintiff from any pecuniary loss resulting from the breach of any of the terms, covenants, and conditions of said contract or agreement, then the obligation of said bond should be void, but otherwise should remain in full force and effect;

And whereas, in said bond or instrument of writing under seal, there was contained a provision that, upon default in the execution of such contract or agreement by the aforesaid principals, the said defendant Company should have the right, if it so desired, to assume and complete the said contract, or to procure the completion thereof;

And whereas, the said principals McCormick and Watts did make default in the execution of such contract and agreement, and wholly failed to do anything whatever in the performance thereof, and did not construct the said houses, or any of them, or any part whatever thereof, and did not in any manner or to any extent whatever indemnify the plaintiff against the loss accruing to the plaintiff from

their failure to perform said contract and agreement; and the defendant Company thereupon, in pursuance of the provision aforesaid of the bond, undertook to assume and complete the said contract; and with that view entered into a further and supplemental contract with the plaintiff under seal, and under date of April 9, A. D. 1906, which the plaintiff now here brings into Court, whereby,

4 at the request of said defendant, the plaintiff released the defendant from the obligation contained in the original agreement aforesaid of November 11, A. D. 1905, to construct

seventeen houses upon the seventeen lots conveyed by the plaintiff as aforesaid, and required only the construction of the seven (7) houses on the seven lots retained by the plaintiff; and whereby also the time was extended for the construction of said seven houses for a period of five months from and after the 11th day of May, A. D. 1906, and the plaintiff at the same time agreed to certain modifications requested by the defendant of the plans and specifications for the building of said houses; and the defendant, in consideration of these concessions by the plaintiff, covenanted and agreed to pay to the plaintiff, as liquidated damages for the delay merely, the sum of twenty two dollars and fifty cents (\$22.50) for each house of the said seven houses, being the sum of one hundred and fifty seven dollars and fifty cents (\$157.50) for all, for each and every month that the said seven houses should remain uncompleted after the 11th of May, A. D. 1906; and further, in consideration of the premises, the defendant covenanted that all the provisions of the original contract aforesaid of November 11, A. D. 1905, except as thus modified by said supplemental contract, should remain in full force and effect, and that the defendant would perform the same; and that nothing in this supplemental contract contained should in any manner discharge or release the defendant from liability under its bond aforesaid of December 14, A. D. 1905;

5 Yet, notwithstanding the premises, and the obligations assumed by the defendant, the defendant has made default in the execution, both of the original and of the supplemental contract aforesaid; and has not constructed said seven houses, or any of them, or any part thereof; and has done nothing whatever towards the execution of said contracts, or of either of them; and has not performed either one of the said contracts in any particular whatever; but has wholly failed and refused so to do; and it has not paid to the plaintiff the sum of \$22.50 for each of the said houses or any part of said sum; and it has not in any manner indemnified or sought to indemnify the plaintiff for his pecuniary loss in the premises, which is the sum of twenty-four thousand one hundred and seventy eight dollars and seventy-three cents (\$24,178.73).

Wherefore the plaintiff claims the said sum of \$24,178.73, with interest thereon from the 12th day of December, A. D. 1906, besides the costs of this suit.

2. The plaintiff sues the defendant for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; and for money paid by the plaintiff for the

defendant at his request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them; and the plaintiff claims the sum of \$24,178.73 with interest from the 12th day of December, A. D. 1906, according to the particulars of demand hereto annexed; besides the costs of this suit.

HAMILTON, COLBERT & HAMILTON,
Plff's Att'ys.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

HAMILTON, COLBERT & HAMILTON,
Plff's Att'ys.

Particulars of Demand.

The Metropolitan Surety Company, to Martin F. Morris, Dr.

To liquidated damages for seven months' delay in construction of houses, as per agreement—\$22.50 for each a month	\$1,102.50
To loss of sale of seven houses at \$4750 each.....	33,250.00
	<hr/>
	\$34,352.50
Deduct allowance to contractors on completion of seven houses	2,466.58
	<hr/>
	\$31,885.92
Deduct value of lots retained by plaintiff, 7 lots containing 11,010.27 square feet at 70 cents a square ft.....	7,707.19
	<hr/>
Balance due plaintiff	\$24,178.73

Affidavit.

DISTRICT OF COLUMBIA, *To wit:*

Martin F. Morris, being duly sworn, deposes and says that he is the person named as plaintiff in the foregoing and annexed declaration, which he expressly refers to and makes part hereof; that the facts stated in the foregoing declaration are true in every particular; affiant will be hereafter referred to as the plaintiff, and The Metropolitan Surety Company as the defendant or the defendant Company; that the defendant, The Metropolitan Surety Company, as this affiant is informed and believes, is a body corporate under and by virtue of the laws of the State of New York, but does business and has an office and an agent in this District; and the several transactions mentioned in the foregoing declaration were entered into

in this District; that the plaintiff being the owner of twenty four several contiguous or adjacent lots in a suburb of the City of Washington, known as West Bloomingdale, which, at the time of the said transactions were, and are at the present time vacant and unimproved, and being desirous to utilize and dispose of the same, entered into a contract, as stated in the declaration, under date of November 11, 1905, with one John F. McCormick and Nathaniel G. Watts, with the defendant in this cause as surety for their faithful performance of the same, to build houses on the said lots of the value of \$3,000 each, whereof seven were to be and remain the property of the plaintiff;

8 That said McCormick and Watts never built said houses or any of them, and never did anything whatever, even as much as the excavation of a foot of earth, towards the execution of said contract; and the time limited for the execution of the same has long since passed; that repeatedly during the time so limited this affiant, who relied exclusively upon the credit of the defendant for such execution, called the defendant's attention, but in vain, to the failure of said McCormick and Watts to proceed with the work;

That, at the conclusion of such time limited, the plaintiff demanded of the defendant the performance of its bond and the payment of the penalty thereof to the plaintiff; that thereupon the defendant requested further time of this affiant, and to be permitted to proceed to execute the contract itself; that the plaintiff acceded to this request, and thereupon a supplemental contract was entered into between the plaintiff and the defendant, the terms of which were and are as stated in the declaration aforesaid; that the time limited in this supplemental contract for the performance of the work has long since expired, and that no work whatever in the premises has been done by the defendant, and the said contracts remain wholly unexecuted by the defendant;

That the plaintiff has repeatedly called upon the defendant to reimburse him, said plaintiff, for his pecuniary losses in the premises, and to pay to the plaintiff the amounts so as aforesaid stipulated to be paid to him; and the defendant has persistently and unjustly refused to pay any sum whatever to the plaintiff or to come

9 to any settlement with him.

And this affiant further says that as he is informed and believes, and expects to prove at the trial of this cause, if the defendant had duly constructed the aforesaid seven houses for him, as it had agreed to do, the plaintiff could have sold the same for the sum of four thousand seven hundred and fifty dollars (\$4,750) each, or the sum of thirty three thousand two hundred and fifty dollars (\$33,250) in all; and that such houses were and are of the market value of \$4,750 each.

And this affiant further says that his cause of action is the defendant's failure to perform its contracts and agreements aforesaid with the plaintiff; and that the amount which is due to him in the premises from the defendant, exclusive of all set-offs and just grounds of defense, is the sum of twenty four thousand one hundred and seventy-eight dollars and seventy-three cents (\$24,178.73), accord-

ing to the foregoing particulars of demand, which is a true and just statement of this affiant's claim.

MARTIN F. MORRIS.

Subscribed and sworn to before me this 7th day of January, A. D. 1907.

[SEAL.]

EDMUND BRADY,
Notary Public, D. C.

10

Pleas.

Filed February 18, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
v.

THE METROPOLITAN SURETY COMPANY, Defendant.

Now comes the defendant, and for a plea to the first count of the declaration filed in the above entitled cause, says that the instrument of writing alleged to bear date November 11, 1905, in said declaration mentioned, is not its deed in manner and form as in said declaration alleged.

2. And for a further plea to the first count of said declaration, the defendant, by leave of the court first had and obtained, says that the bond or instrument of writing alleged to bear date December 14, 1905, in said declaration mentioned, is not its deed in manner and form as in said declaration alleged.

3. And for a further plea to the first count of said declaration, the defendant, by leave of the court first had and obtained, says that the supplemental contract alleged to bear date April 9, 1906, in said declaration mentioned, is not its deed in manner and form as in said declaration alleged.

4. And for a further plea to the first count of said declaration, the defendant, by leave of the court first had and obtained, says that it never undertook to assume and complete the alleged contract of John F. McCormick and Nathaniel G. Watts with the plaintiff in manner and form as in said declaration alleged.

5. And for a further plea to the first count of said declaration, the defendant, by leave of the court first had and obtained, says that the plaintiff has not been in any wise damaged by reason of any matter, cause, or thing mentioned in the condition of the said bond or instrument of writing alleged to bear date December 14, 1905, or in the said supplemental contract alleged to bear date April 9, 1906.

CHAS. A. DOUGLAS,
E. B. SHERRILL,
Attorneys for Defendant.

DISTRICT OF COLUMBIA, ss:

Charles N. Vance, being first duly sworn, on oath deposes and says that he is the resident Vice-President and General Agent in the District of Columbia of the Metropolitan Surety Company, the defendant in this cause, and makes this affidavit on behalf of said defendant as such resident Vice-President and General Agent; that the said defendant has a good defense to the plaintiff's supposed cause of action, its defense being that the instrument of writing alleged to bear date November 11, 1905, and the bond or instrument of writing alleged to bear date December 14, 1905, and the supplemental
12 contract alleged to bear date April 9, 1906, set out by the plaintiff in his said declaration, are not the deeds of the defendant the Metropolitan Surety Company; that he has read the first three pleas of the defendant to the said declaration, and that the same are true.

Affiant is advised by counsel that even if said instruments were the deeds of the defendant, yet the plaintiff in his declaration has not stated such a cause of action as entitles him to a judgment without trial by jury, because it appears that the damages, if any, sustained by the plaintiff by the breach of the conditions of said supposed bond or instrument of writing and by the non-performance of the said supposed contracts are not liquidated and fixed, and cannot be ascertained or determined without the verdict of a jury.

CHAS. N. VANCE.

Subscribed and sworn to before me this 18 day of February, 1907.

[SEAL.]

E. M. HELMS,
Notary Public, D. C.

(Endorsed:) Leave to file these several pleas is granted.

THOS. H. ANDERSON, *Justice.*

13

Demurrer.

Filed February 18, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
v.
THE METROPOLITAN SURETY COMPANY, Defendant.

Now comes the defendant and says that the second count in the declaration in the above entitled cause is bad in substance.

NOTE.—Among the points to be argued is that the said count is not supported by the bill of particulars filed therewith, and said bill of particulars is not consistent with, but is repugnant to said count,

and the items specified in said bill of particulars cannot be proven under said count.

CHAS. A. DOUGLAS,
E. B. SHERRILL,
Attorneys for Defendant.

Hamilton, Colbert & Hamilton, Attorneys for Plaintiff.

Please take notice that we will call up the above demurrer for a hearing on Friday the 1st day of March, 1907, in one of the
14 Circuit Courts, at ten o'clock A. M., or as soon thereafter as counsel can be heard.

CHAS. A. DOUGLAS,
E. B. SHERRILL,
Attorneys for Defendant.

Supreme Court of the District of Columbia.

FRIDAY, *March 8, 1907.*

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 49058.

MARTIN F. MORRIS, Pl't'f,
vs.
THE METROPOLITAN SURETY CO., Def't.

Upon hearing the defendant's demurrer to the second count of the plaintiff's declaration, it is considered that said demurrer be and it is hereby overruled with leave to defendant to plead over within ten (10) days.

15 *Pleas to Second Count of Declaration.*

Filed March 19, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
v.
METROPOLITAN SURETY COMPANY, Defendant.

Now comes the defendant, and for a plea to the second count of the declaration filed in the above entitled cause, confesses the said action of the plaintiff as to the sum of \$1102.50, parcel of the sum of \$24,178.73, claimed in said second count, with interest on said

sum from the 12th day of December, 1906, which said sum the defendant has always been ready and willing and still is ready and willing to pay to said plaintiff.

And as to the sum of \$23,076.23, parcel of the said sum of \$24,178.73 claimed in the second count of said declaration, the defendant says that it never promised in manner and form as in said declaration alleged.

And for a further plea as to the sum of \$23,076.23, parcel of the said sum of \$24,178.73 claimed in the second count of said declaration the defendant says that it is not indebted in manner and form as in said declaration alleged.

DOUGLAS & DOUGLAS,
Attorneys for Defendant.

16

Affidavit.

DISTRICT OF COLUMBIA, ss:

Charles N. Vance, being first duly sworn, on oath deposes and says that he is the Resident Vice-President and General Agent in the District of Columbia of the Metropolitan Surety Company, the defendant in this cause, and makes this affidavit on behalf of said defendant as such Resident Vice-President and General Agent; that the defendant has a good defense to the claim of the plaintiff sued on in the second count of his declaration, except as to the sum of \$1102.50 thereof (with interest on said sum from the 12th day of December, 1906), which it admits to be due by it to the plaintiff under a certain agreement between the plaintiff and the defendant, dated April 9, 1906, whereby the defendant agreed to pay to the plaintiff the sum of \$22.50 for each house for each month that seven certain houses which one John F. McCormick and one Nathaniel G. Watts agreed in a contract by them with the plaintiff dated November 11, 1905, to erect on lots No. 2, 4 and 6 in Block No. 2, and lots No. 32, 34, 36 and 38 in Block No. 1, in Morris and others subdivision known as "West Bloomingdale", should remain uncompleted after the 11th day of May, 1906. Its defense to the balance of the plaintiff's claim sued on in said second count, amounting to \$23,076.23 is that it never covenanted or agreed with the plaintiff to perform the aforesaid contract between the plaintiff and McCormick and Watts dated November 11, 1905, and never covenanted or agreed to erect or complete the seven houses hereinbefore mentioned.

17

CHAS. N. VANCE.

Subscribed and sworn to before me this 19th day of March, 1907.

[SEAL.]

WM. B. MATTHEWS, JR.,
Notary Public, D. C.

Memorandum.

June 12, 1908.

Joinder of Issue, Note of Issue, and Notice of Trial, Filed — calendared.

2—2052A

Suggestion of Dissolution of Defendant.

Filed March 15, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
vs.

METROPOLITAN SURETY COMPANY, a Corporation, Defendant.

Come now the attorneys upon the record of the said defendant, and here suggest and show unto the Court that since the
18 institution of the above entitled cause, the said Metropolitan Surety Company, a corporation, has been dissolved by judgment or decree of the Supreme Court of the State of New York, a Court of competent jurisdiction of said State, under the laws of which the said corporation was organized, and its corporate rights, privileges and franchises forfeited, as will appear by a certified copy of the judgment or decree of dissolution of said corporation, rendered on the thirtieth day of January, 1909, by the said Court, hereunto annexed and made a part hereof; whereby the said attorneys say that the charter of the said Metropolitan Surety Company become and is vacated and annulled, and the company and the corporate franchise of the same are extinct.

DOUGLAS, BAKER & SHEKILL,
Attorneys upon the Record of Said Defendants.

Fol. 1. At a Special Term of the Supreme Court of the State of New York, held in and for the County of Albany at the City Hall in the City of Albany, State of New York, on the 30th day of January, 1909.

Present: Hon. George H. Fitts, Justice.

Supreme Court—Albany County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE METROPOLITAN SURETY COMPANY.

“2. The summons and complaint in this action having been duly served on the defendant, and the defendant having
19 duly appeared by David McClure, as its attorney, and having served its answer herein, from which answer it appears that the plaintiffs are entitled to a judgment dissolving the defendant and for the relief prayed for in the complaint herein; and an order having been made and entered herein in the office of the Clerk of Albany County on January

- " 3. 6, 1909; appointing John F. Yawger temporary receiver of the defendant, and enjoining the defendant, its directors, officers and managers from exercising any of the corporate franchises, powers rights or privileges of the defendant, and from collecting or receiving any debt or demand to or held by the defendant, and from paying out or in any way transferring or delivering to any person any of the deposits, moneys, securities, property or effects of said defendant, or held by it during the pendency of this action, and ordering that the defendant show cause at this time and place why such receiver and injunction should not be made permanent; and the said temporary receiver having duly qualified.
- " 4. Now, on reading the aforesaid summons and complaint, order to show cause, affidavits of Otto Kelsey and Edward R. O'Malley herein, verified January 5, 1909, heretofore filed, and reading and filing the answer, and after hearing Edward R. O'Malley Attorney General of the State of New York, in support of this motion and David McClure for the defendant, not opposing, and further notice of this application for this judgment being waived in open court;
- " 5. 20 Now, on motion of Edward R. O'Malley, Attorney General of the State of New York, attorney for the plaintiffs herein; it is hereby
Adjudged and Decreed that the defendant, The Metropolitan Surety Company be, and the same is, hereby dissolved and its corporate rights, privileges and franchises forfeited, and that a fair and just distribution of the property thereof, and of the proceeds thereof, among its stockholders and its fair and honest creditors, in the order and in the proportion prescribed by law, be had; and it is further
Adjudged and Decreed that the defendant, The Metropolitan Surety Company, its trustees, directors, managers and other officers, attorneys and agents, be, and each of them hereby is forever restrained and enjoined from exercising any of the corporate franchises, powers, rights or privileges of the defendant and from collecting or receiving any debts, or demands, belonging to or held by the defendant, and from paying out, or in any manner interfering with transferring or delivering to any person, any of the deposits, moneys, securities, property or effects of said defendant, or held by it; and it is further
Adjudged and Decreed that John F. Yawger, of New York in the State of New York, be and he hereby is, continued as receiver of all the property and effects, real and personal, of the said corporation, The Metropolitan Surety Company, and of all the property, real personal and mixed, seized, possessed and held by it, of whatsoever kind and wheresoever situate, either in this state or in any other state or states, including all property of any kind in which said corporation has or may have any interest, and he is hereby appointed per-

- manent receiver of the said The Metropolitan Surety Company, and of all its property and assets of every kind, nature and description, whether the same is situate in this State or elsewhere, with the usual powers and duties enjoyed and exercised by receivers, according to the practice of this Court and of the statutes in such case made and provided; and that the bond heretofore executed and delivered to The People of the State of New York, constituting an agreement or undertaking of the American Surety Company, given by said surety company for and on behalf of John F. Yawger as such temporary receiver, so conditioned as that the said bond shall continue in force and effect until the final discharge of the said John F. Yawger as receiver, including any liabilities which may be incurred by said John F. Yawger by virtue of his appointment as receiver, be continued as provided by law, and the said John F. Yawger, as such permanent receiver, is authorized and directed to sequester, take and retain possession of the property, things in action and effects, real and personal, of the defendant herein, and to take and hold all property held by or in possession of said defendant corporation or by him as temporary receiver thereof; and it is further
- 22 Adjudged and Decreed that the said John F. Yawger, as such permanent receiver, continue to proceed to recover by process of law, or otherwise, any sum or sums of money which may be due to said corporation; and full power is hereby conferred upon the said receiver to institute and maintain actions and suits at law in any court or courts having competent jurisdiction for the collection of debts due to the defendant and the enforcement of any rights relating to the said corporation, its property and assets; and it is further
- “ 10. Adjudged and Decreed that all moneys of said defendant not need- for immediate disbursements be deposited in one or more of the following trust companies in the City of New York: Title Guarantee & Trust Company, Van Norden Trust Company, Broadway Trust Company, Norton Trust Company and Fidelity Trust Company, such amount at any time in cash as said receiver may deem best to be held by such trust companies subject to the order of the permanent receiver in this action; the said moneys so deposited with such trust companies, as aforesaid, not to be delivered over by them except subject to, and in pursuance of, the orders of this court heretofore granted or hereafter to be granted; but said receiver may at any time, in his discretion, and without further order of the court, transfer any or all of such moneys so to be deposited in any *of* one of said trust companies, by check to the order of one or more of the other of said trust companies; and it is further
- 23 Adjudged and Decreed that no application shall hereafter be made to any court, nor shall any action of

the court be asked or suffered by said permanent receiver, as to the funds and assets of the defendant above named or their transfer, sale or delivery, unless due notice of such application be first given to the Attorney General of the State of New York, as required by law; and copies of all orders made or procured shall be immediately served on the Attorney General, as required by law; and it is further

Adjudged and Decreed that such further application may be made to this court as the receiver may be advised is proper and necessary for the management and conduct of his trust; and it is further

Adjudged and Decreed that all persons who-soever, and especially creditors of said defendant, be enjoined and restrained from commencing any action or proceeding against said defendant or against said permanent receiver, or from taking any further proceedings in any action or proceeding already commenced, without first obtaining leave of this court to bring such action or proceeding, except in cases where leave of this court has heretofore been obtained, permitting actions or proceedings against the temporary receiver herein.

Enter

JOHN FRANEY, *Clerk.*

GEORGE H. FITTS,
Justice Supreme Court.

24

Exemplification.

STATE OF NEW YORK,
City and County of Albany, ss:

I, John Franey, Clerk of said City and County, and also Clerk of the Supreme and County Courts, being Courts of record held therein, do hereby certify that I have compared the annexed copy of Judgment and of the endorsements thereupon, with the original records now on file and recorded in this office, and that the same is a correct copy and transcript of the same, and of the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 15th day of February A. D., 1909.

[SEAL.]

JOHN FRANEY, *Clerk.*

STATE OF NEW YORK,
Third Judicial Department,
City and County of Albany, ss:

I, George H. Fitts, a Justice in the Third Judicial Department of the Supreme Court of the State of New York, do hereby certify that John Franey, the individual named in the foregoing certificate as Clerk, was, at the time of making said certificate, Clerk of the said City and County of Albany, and Clerk of the Supreme Court, duly

25 elected and qualified, and the foregoing signature by him is
 genuine; that as such Clerk, he had the custody of the original *words* of the said Supreme Court, and the foregoing attestation to said copy of said record is in due form of law.

Witness my hand, this 15th day of February A. D.; 1909.

GEORGE H. FITTS,
Justice of the Supreme Court.

Supreme Court of the District of Columbia.

FRIDAY, June 18, 1909.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

At Law. No. 49058.

MARTIN F. MORRIS, Pl't'f,
 vs.
 THE METROPOLITAN SURETY COMPANY, Def't.

This cause coming on to be heard upon the suggestion of the Attorneys for the defendant filed herein, of the dissolution of said defendant, and having been argued and submitted, and it appearing to the Court that the cause of action does not survive, it is ordered that it stand abated.

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SATURDAY, June 19, 1909.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

At Law. No. 49058.

MARTIN F. MORRIS, Pl't'f,
 vs.
 THE METROPOLITAN SURETY COMPANY, Def't.

Now comes here the plaintiff by his Attorney Mr. J. J. Darlington, and notes an appeal in open Court to the Court of Appeals of the District of Columbia from the judgment in this cause, and upon motion, the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars (\$100).

Memorandum.

June 28, 1909.—Appeal bond filed.

27 *Directions to Clerk for Preparation of Transcript of Record.*

Filed July 26, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49058.

MARTIN F. MORRIS, Plaintiff,
vs.

THE METROPOLITAN SURETY COMPANY, a Corporation, Defendant.

To the Clerk:

Please prepare transcript of record for appeal in the above entitled cause, including therein the following:

1. Declaration, notice of appeal, particulars of demand and affidavit.
2. Order granting leave to file pleas.
3. Pleas and affidavit.
4. Demurrer to second count of declaration.
5. Order overruling demurrer.
6. Pleas and affidavit.
7. Memorandum of issue joined and cause calendared.
8. Suggestion of dissolution of defendant.
9. Order abating suit.
10. Memorandum of appeal noted and appeal bond.
11. This designation and the accompanying notice.

J. J. DARLINGTON,
Attorney for Plaintiff.
S.

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Notice.

To Messrs. Douglas, Baker and Sherrill, Attorneys for Defendant.

GENTLEMEN: Please take notice that the foregoing designation for the record on appeal in the above entitled cause has been this day filed with the Clerk of the Court.

J. J. DARLINGTON,
Attorney for Plaintiff.
S.

DISTRICT OF COLUMBIA, ss:

I, William C. Sullivan, on oath say that, at the direction of Joseph J. Darlington, Esquire, attorney for the plaintiff in the cause of Martin F. Morris vs. The Metropolitan Surety Company, No. 49,058, At Law, I have this day served upon Messrs. Douglas, Baker and Sherrill, attorneys of record for the defendant in said cause, the foregoing and annexed designation for the record on appeal therein, by leaving a copy of the said designation, at their offices, with Gibbs

L. Baker, Esquire, one of the members of the firm of Douglas, Baker and Sherrill.

WILLIAM C. SULLIVAN.

Subscribed and sworn to before me, this 23rd day of July, A. D. 1909.

[SEAL.]

IRWIN H. LINTON,
Notary Public, D. C.

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 28 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49058 At Law, wherein Martin F. Morris is Plaintiff and The Metropolitan Surety Company is Defendant, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 13th day of August, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*
By FRED. C. O'CONNELL,
Ass't Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2052. Martin F. Morris, appellant, vs. The Metropolitan Surety Co. Court of Appeals, District of Columbia. Filed Aug. 13, 1909. Henry W. Hodges, clerk.

